IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1773 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDRESH BALDEVBHAI PATEL - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR YOGESH S LAKHANI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/09/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner, - original complainant has prayed for an appropriate order to transfer the investigation of complaint being C.R. No. I 411/07 registered with Satellite

Police Station to some other officer not below the rank of Dy.S.P. and under the supervision of Police Commissioner, Ahmedabad city.

2. It is the case of the petitioner that in spite of the fact that the main FIR has been lodged on 23-5-07, the Investigating Officer of Satellite Police Station has not further investigated the said FIR and even the accused persons were also not arrested, as they are very influential. Not only that but the concerned Investigating Officer submitted a report to the ld. Chief Judicial Magistrate by report dated 15-8-07 to delete the offence u/s 394 of IPC only with a view to facilitate the accused persons to get bail. It is also further submitted by the petitioner that as such even the anticipatory bail application submitted by the accused persons was rejected by this Court as dismissed as withdrawn and still the accused persons were not arrested and after the present petition is filed and the notice was issued by this Court on 18-9-07 making it returnable on 25-9-07 and after the Investigating Officer is directed to submit the police papers of the investigation with respect to FIR in question before this Court for perusal of this Court, the accused persons came to be arrested by the present Investigating Officer on 21-9-07 in the late night hours and they were produced before the ld. Magistrate having urgent charge in the night and the ld. Magistrate released those accused persons on bail immediately. Therefore, it is submitted that the investigation by the Investigating Officer is not conducted in a fair and right direction and it is apprehended that the petitioner may not get the justice and the truth will not come out. Under the circumstances, it is requested to transfer the investigation to any other higher superior authority.

3. Shri Mengdey, ld. APP has submitted that as one of the accused was suffering from some heart disease, he was produced before the ld. Magistrate at night. Be that it may, the fact remains that though the complaint was filed on 23-5-07, there was no arrest till 21-9-07 i.e. till this Court intervened in the matter and issued the notice upon the present Investigating Officer. This shows the conduct on the part of the Investigating Officer. It also appears that the present Investigating Officer has submitted a report before the ld. Chief Judicial Magistrate for deleting the offence u/s 394 of IPC. Considering the aforesaid facts and circumstances of the case, the investigation of complaint being C.R. No. I 411/07 registered with Satellite Police Station is hereby directed to be transferred to DCP, Zone 1, Ahmedabad and the concerned DCP is directed to further investigate the aforesaid complaint being C.R. No. I 411/07.

4. It appears from the record and the police papers that the present Investigating Officer has submitted a report dated 15-8-05 before the ld. Chief Judicial Magistrate, Ahmedabad for deletion of the offence u/s 394 of the IPC. The DCP, Zone 1, Ahmedabad, who will be now the Investigating Officer of the aforesaid case is directed to reconsider the same.

5. It is reported that whenever during the course of the investigation any report is submitted by the concerned Investigating Officer to delete a particular section, no orders are passed by the concerned Magistrate and/or Chief Judicial Magistrate under the provisions of Criminal Procedure Code. The ld. Magistrate and/or ld. Chief Judicial Magistrate is not

bound to accept the report submitted by the Investigating Officer and the ld. Magistrate and/or ld. Chief Judicial Magistrate is required to consider such report and pass appropriate order, otherwise, any action contrary to the same would be considered as contrary to the provisions of the Criminal Procedure Code, more particularly, section 169 of Criminal Procedure Code. Under the circumstances, the ld. Chief Judicial Magistrate, Ahmedabad Rural is directed to pass appropriate order on the report submitted by the Investigating Officer vide report dated 15-8-07 and may take his own decision in accordance with law and on merits considering the investigating papers and whether the offence u/s 394 of IPC to be deleted or not. Even at the time of framing of the charge also, the ld. Magistrate and/or ld. Chief Judicial Magistrate is required to consider for what offence/section(s), accused persons is to be charged and even considering the investigating papers, if the concerned Magistrate/Chief Judicial Magistrate is of the opinion that a charge is to be framed against the accused persons for the offence will not charge, the ld. Magistrate can frame the charge for the said offence also. The ld. Chief Judicial Magistrate is required to consider the same at the time of framing of the charge. Rule made absolute. DS permitted.

(M.R. Shah, J.)

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